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APR 22 1980

Attorney for Plaintiff

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN DIEGO

9
10 CINEMATRONICS, INC.,
11 a California corporation,

Plaintiff,

v.

13 VECTORBEAM, a California
14 corporation; EXIDY, INCORPORATED,
15 a California corporation;
and DOES I through X, inclusive,

Defendants.

Case No. 451437

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF APPLICATION
FOR TEMPORARY RESTRAIN-
ING ORDER AND PRE-
LIMINARY INJUNCTION

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18 COMES NOW Plaintiff, CINEMATRONICS, INC., who respectfully
19 submits the following Memorandum of Points and Authorities in
20 support of its application for a Temporary Restraining Order and
21 Preliminary Injunction:

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23 PPELIMINARY STATEMENT

24 Plaintiff CINEMATRONICS, INC. is possessed of a license
25 to commercialize certain patents held by its major stockholders
26 with respect to a vector generating system known as the "ROSENTHAL
27 SYSTEM". That vector generating system is an integral part of

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3 certain electronic games now popular in the marketplace.

4 Defendant VECTORBEAM is a wholly-owned subsidiary of de-
5 fendant EXIDY, INCORPORATED. Attached as EXHIBIT "B" to the
6 declaration of JIM PIERCE is a true and correct copy of the
7 contract whereby plaintiff granted the right to commercialize that
8 generating system to defendants in exchange for the payment of
9 certain royalties together with the execution of a promissory
10 note. Said contract authorizes the issuance of an injunction,
11 without bond, to enforce its terms.

12 The declaration of JIM PIERCE submitted herewith read
13 together with the verified complaint on file herein discloses
14 that no such royalties have ever been paid to plaintiff nor has
15 any accounting been made to it although plaintiff is aware that
16 sales have occurred with respect to the "ROSENTHAL SYSTEM" and
17 electronic games using it. Neither has any more than the first
18 THIRTY FIVE THOUSAND DOLLAR (\$35,000) installment been paid on the
19 FIVE HUNDRED THOUSAND DOLLAR (\$500,000) note.

20 Plaintiff seeks this temporary restraining order and pre-
21 liminary injunction to prevent the continuing commercializing
22 by the defendants, and each of them, of that vector generating
23 system. Plaintiff submits that if the defendants are permitted
24 to continue to manufacture, use, sell, distribute or otherwise
25 commercialize the patented items licensed by plaintiff to them,
26 without accounting and paying the plaintiff as provided in the
27 license agreement, defendants will be enabled to exploit the
28 selling field of the items, secure distributors, flood the market

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3 and render totally ineffectual the efforts of plaintiff to manu-
4 facture and distribute the items itself.

6 ARGUMENT

7 1. While the Federal District Courts have original
8 and exclusive jurisdiction of any civil action arising under any
9 Act of Congress relating to patents [28USC §1338(a)], every action
10 that involves a United States Patent is not for governed ex-
11 clusively by Federal Law since a patent is not granted without
12 reference to the general powers the States possess over their
13 domestic affairs. Farmland Irrigation Co. v. Dopplmaier, 48Cal.
14 2d 208, 216 - 217, 308P.2d 732 (1957). State Courts may construe
15 and enforce contracts and licenses relating to patents which
16 may present patent questions incidental to the case. Id at
17 216 - 217; Rogers v. Hensley, 194Cal.App.2d 486, 489, 14Cal. Rptr.
18 870 (1961).

19 2. Accordingly, 35 U. S. C. §283 provides:

20 "The several Courts having jurisdiction of
21 cases under this title may grant injunctions
22 in accordance with the principles of equity
23 to prevent the violation of any right secured
24 by patent, on such terms as the Court deems
25 reasonable."

26 and the exclusive licensee of such a patent may properly bring the
27 action. Security Materials Co. v. Mixermobile Co., 72F. Supp.
28 450 (D. C. Cal. 1947).

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3 3. An injunction may be granted when it appears by the com-
4 palint that the palintiff is entitled to the relief demanded and
5 such relief, or any part thereof, consists in restraining the
6 act complained of, either for alimited period or perpetually.
7 CCP §526(1); Dingley v. Buckner, 11Cal.App. 181, 183 - 184, 104P.
8 478 (1909). In Dingley, supra, the Court thus noted that no
9 proceeding at law could afford an adequate remedy for the destruc-
10 tion of one's business.

11 4. An injunction may be granted when it appears by the
12 complaint and affidavits that the continuance of some act during
13 the litigation would produce great or irreparable injury to a
14 party in the action. CCP §526(2); Smith v. Smith, 49Cal.App. 2d
15 716, 718 - 719, 122P.2d 346 (1942). The term "irreparable injury"
16 means that species of damages, whether great or small, that aught
17 not be submitted to on the one hand or inflected on the other.
18 Wind v. Herbert, 186Cal.App. 2d 276, 285, 8Cal. Rptr. 817 (1960).

19 5. An injunction may be granted when it appears, during
20 the litigation, that a party to the action is doing, or threatens,
21 or is about to do, or is procuring or suffering to be done some
22 act in violation of the rights of another party to the action
23 respecting the subject of the action and tending to render the
24 judgment ineffectual. CCP §526(3); Lenard v. Edmonds, 151Cal.App.
25 2d 764, 769, 312P.2d 308 (1957); Rossi v. Rossi, 134Cal.App. 2d
26 639, 641, 286P.2d 563 (1955).

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3 6. An injunction may be granted where pecuniary compensation
4 would not afford adequate relief or where it would be extremely
5 difficult to ascertain the amount of compensation which would
6 afford adequate relief. CCP §§526(4)(5); Union Oil Co. v.
7 Domengauz, 30Cal.App.2d 266, 270 - 271, 86P.2d 127 (1939).

8 7. An injunction may be granted where the restraint is
9 necessary to prevent a multiplicity of judicial proceedings.
10 CCP §526(6); Rynsbarger v. Dairymen's Fertilizer CoOp, Inc.,
11 266 Cal.App. 2d 269, 279, 72 Cal. Rptr. 102 (1968).

12 8. An injunction may be granted where the obligation arises
13 from a trust. CCP §526(7); St. James Church v. Superior Court,
14 135 Cal.App. 2d 352, 360 - 361, 287P.2d 387 (1955).

15 9. An injunction may issue in cases where evidence exists
16 that completed acts will probably recur. Rosicrucian Fellowship
17 v. Rosicrucian Fellowship Non-Sectarian Church, 39Cal. 2d 121,
18 144, 245 P.2d 481 (1952); Fretz v. Burke, 247Cal.App. 2d 741,
19 744, 55Cal. Rptr. 879 (1967).

20 10. Finally, an injunction may, accordingly, be granted
21 to protect various kinds of interests in business and personal
22 property, i. e.: Unlawful interference with the conduct of a
23 lawful business, Uptown Enterprises v. Strandm 195Cal.App. 2d
24 45, 51, 15Cal. Rptr. 436 (1961); wrongful use of trade secrets,
25 George v. Burdusis, 21Cal.App. 2d 153, 159, 130P.2d 399 (1942);
26 Sketchley v. Lipkin, 99Cal.App. 2d 849, 854, 222P.2d 927 (1950);
27 Greenley v. Cooper, 77Cal.App. 3d 382, 392, 143Cal. Rptr. 415 (1978);
28 violation of the Fair Trade Act, B & PC §16900; violation of

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3 the Unfair Trade Practices Act, B & PC §17078; trademark infringement,
4 Lutz v. Western I & M Co., 190Cal. 554, 560, 213P. 962 (1923);
5 and patent infringement. Leishman v. Radio Condensor Co., 167F.
6 2d 890 (C.C.A. 1948) cert den 335 U. S. 891; MGM Corp. v. Fear,
7 104F. 2d 892 (C.C.A. 1939).

8 11. The right of plaintiff to secure a temporary restraining
9 order and subsequent preliminary injunction to protect its in-
10 vention from unlawful use is expressly set forth by the Court in
11 Sketchley v. Lipkin, et. al., 99Cal.App. 2d 849, 222P. 2d 927 (1950).
12 Therein plaintiff sought an injunction against the defendants
13 from exercising any right over a certain machine invented by
14 plaintiff or from keeping, using or alienating the novel features
15 or parts thereof. Trusting the issue of whether plaintiff was
16 entitled to injunctive relief the Court declared:

17 "The recipient of the secret process of manu-
18 facture imparted to him in confidence or to one
19 who accepted in consideration of an agreement to
20 perform valuable covenants which the latter vio-
lates would be enjoined from using such secret
process." [Citations omitted]

21 "Thus by the cited authorities it is established that the owner
22 of an unpatented device is by legal principles protected against
23 the piracy of an invention because it is his own by virtue of
24 being the original product of his mind. But the strong arm of
25 equity reaches further. When a contractee has gained an intimate
26 knowledge of such an invention by virtue of an agreement to use
27 it according to specified terms and thereafter repudiates the

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3 agreement, the contractor will be awarded injunctive relief to
4 prevent the use of such knowledge of the secret processes
5 or inventions so gained from him by his contractee." Id
6 Plaintiffs submits that the quoted language from Sketchley, *supra*,
7 is controlling to respective of the contractual provisions dis-
8 cussed *infra*.

9 12. Attached to the Declaration of JIM PIERCE submitted
10 herewith as EXHIBIT "B" is the "Mutual Cross License and Royalty
11 Agreement" which forms the basis of the instant action. Section
12 20 of that agreement provides that both parties agree that in
13 addition to all other remedies each may have for the other's
14 breach of this agreement, each shall have the right to request
15 of a Court of competent jurisdiction injunctions to join the other
16 from violating the covenants and conditions of this agreement.
17 Moreover, Section 12 thereof provides that if royalties are not
18 timely paid then in addition to all other legal rights each party
19 as licensor shall have the right to injunctive relief both
20 preliminary and permanent, to stop further sale, manufacture or
21 delivery of its Vector System by the other. Both parties further
22 agreed in Section 12 thereof that the Court may issue an injunction
23 without any showing that this injunctive relief is necessary to
24 protect royalty payments and that no bond shall be required.

25 13. Thus, irrespective of Sketchley, *supra*, plaintiff,
26 by contractual provision providing therefore, is entitled to the
27 relief it seeks upon a showing that royalties have not been

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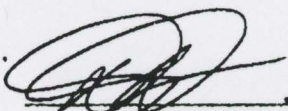
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3 timely paid. The Declaration of JAMES PIERCE submitted herewith
4 clearly establishes such a breach.

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6 WHEREFORE, based on the foregoing, plaintiff prays this
7 Court, pending hearing on the Order to Show Cause re Injunction,
8 restrain the defendants, and each of them, from using, selling,
9 marketing, manufacturing, distributing or otherwise commercializing
10 that certain Vector Generating System known as the "ROSENTHAL
11 SYSTEM".

12 Respectfully submitted.

13 DATED: April 22, 1980


14 ROBERT H. BASIE
15 Attorney for Plaintiff
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